IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:		Bohdan K. ZABAWSKYJ; Daniel P. MOREL
Application No.	:	10/603,099
Filed	:	June 19, 2003
Title	:	METHOD FOR IMPLEMENTING A WIRELESS LOCAL AREA NETWORK (WLAN) GATEWAY SYSTEM
TC/A.U.	:	2617
Examiner	:	THIER, Michael
Docket No.	:	P1770US00
Customer No.	:	85845
Confirmation No.	:	8416

Mail Stop **Amendment**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the final rejection of October 9, 2009 ("Office Action") in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. Reconsideration and allowance of the subject application are respectfully requested. Claims 1, 25-30, 32-42 and 44-47 are pending in the application. Claims 1 and 36 are independent.

Claims 1, 25-30, 32-42 and 44-47 were finally rejected under 35 U.S.C. 103(a) as being unpatentable over Kalavade (US 2003/0051041) in view of Takeuchi (US 2003/0134615) and Harnesk (US 2006/0008063), in various combinations with Schlieben (US 2003/0096605) and Brown (US 2003/0112936), for reasons discussed on pages 5-12 of the Office Action. Applicant respectfully traverses all art rejections, for at least the reasons set forth in the previously-submitted responses. The basis for this request for review is an improper combination of the Kalavade and Harnesk references, as well as missing limitations even if the combination were proper.

Each of independent claims 1 and 36 recite, among others, the features of "*sending an instruction from said access gateway to said rating element to determine a rate for packets carried between said computing device and said WLAN access network to*

establish a rate of charge for each of said packets according to a different classification assigned to each of said packets," and, "*sending an instruction from said access gateway to said charging element representing charging details associated with the access of said server by said computing device; said charging details based on said rate.*"

Improper Combination of the Kalavade and Harnesk References

With respect to the above-recited limitations, the Examiner concedes at page 8 of the Office Action that Kalavade does not satsify "...*said charging details based on said rate.*" The Examiner relies on Harnesk for that limitation, as well as for Applicants' claimed rating element and the limitation "*sending an instruction from said access gateway to said rating element to determine a rate for packets...*"

Kalavade describes a Converged Billing/Authorization Gateway (CBG) which collects usage information from a router, then formats the information and sends it to an operator's existing system for rating and billing. Harnesk describes a control system with a credit account and a rating engine, and a packet forwarding system with a charging policy enforcement point and a token bucket. Harnesk's packet forwarding system obtains rating information from the control system.

The Examiner, in relying on Harnesk to provide the above-identified limitations lacking from Kalavade, asserts at page 9 of the Office Action that it would be obvious to combine the teachings of Kalavade and Harnesk in order to reduce signaling between systems. However, Kalavade teaches away from the asserted combination with Harnesk. Further, such a combination would **not** reduce signaling between the systems asserted by the Examiner, and would in fact **increase** signaling between other, more relevant systems in Kalavade. The combination of Kalavade and Harnesk is therefore improper.

Applicants previously argued that Kalavade teaches away from generating any billing information at the CBG at paragraph [0232]. In response, the Examiner argues that the use of the term "preferably" in that paragraph does not constitute explicit teaching away, as it leaves open the possibility of generating such

information. The remainder of Kalavade's disclosure, however, provides no indication that the CBG is intended to carry out any rating activities. Paragraph [0232] also recites, "The actual rating **is** done by the operator's existing systems." The absence of "preferably" leaves no doubt as to the entity responsible for rating: the operator systems. Kalavade also shows, in Figure 11 and Table 1, information that can be generated by the CBG, **none** of which relates to rating. Applicants submit that a single use of the word "preferably" cannot be given such weight as to contradict the remainder of Kalavade's disclosure. A person skilled in the art would therefore be lead **away** from providing the CBG with a rating element.

In addition, Applicants submit that notwithstanding the above arguments, the Examiner's proposed motivation for combining Kalavade with Harnesk is flawed. The Examiner asserts that a person skilled in the art would combine the teachings of Kalavade and Harnesk in order to reduce signaling between the CBG and operator systems. This motivation is drawn from Harnesk, but contradicts the actual teachings of Harnesk. Harnesk's reduction in signaling is achieved between a packet forwarding system and a control system. The Examiner identifies the packet forwarding system as being equivalent to Kalavade's router (cited as reading on Applicants' access gateway) and the control system as being equivalent to the CBG. Thus, if Harnesk can provide any motivation to reduce signaling between systems in Kalavade, it would clearly be to reduce signaling between the router and CBG. Harnesk even emphasizes the importance of low latency in that very signal pathway at paragraph [0070]. In response to Applicants' previous arguments that the asserted combination of art would in fact **increase** signaling between Kalavade's router and CBG, the Examiner contends that this is irrelevant. Instead, according to the Examiner's argument at page 4 of the Office Action, a person skilled in the art would be lead to reduce signaling between the CBG and Kalavade's operator system rather than between the CBG and the router. The Examiner does not provide any evidence in support of the contention that a person skilled in the art would be lead by Harnesk not only to reduce signaling between

different systems than those emphasized by Harnesk, but also to actually increase signaling between the very systems targeted for reduction by Harnesk. It would appear that such a proposed motivation could only originate from an effort to satisfy the limitations of Applicants' claims, which clearly constitutes an improper use of hindsight analysis. The actual teachings of Harnesk would, if anything, lead a person to avoid any modification to Kalavade that would result in increased signaling between the router and the CBG.

Further, even if the combination of Kalavade and Harnesk were made, there is no evidence that it would actually result in reduced signaling between Kalavade's router and CBG. The Examiner asserts that generation of billing information at the CBG means that no information needs to be sent to the operator systems. This is clearly not the case. Kalavade does not describe any embodiment in which there is no communication with the operator systems. At paragraphs [0227]-[0231] Kalavade describes four ways in which the CBG interfaces with the operator billing systems. All four ways involve the formatting and **forwarding** of usage information. Kalavade also repeatedly emphasizes the desirability of generating a single bill for both LAN and WAN access (at paragraphs [0056] and [0068], for example), which requires the forwarding of information to operator systems. In addition, the signal flow diagrams of Figures 27-33 all show information being transmitted to an accounting server external to the CBG. Thus, even if the CBG were to conduct rating and/or generate "billing information," this would not result in a reduction in signaling to the operator systems, as Kalavade clearly teaches that information is **always** sent to those systems. Whether that information is rated or not is of little significance.

Applicants therefore submit that for at least the above reasons, the Examiner has not provided adequate motivation to combine the cited references (e.g., *In re Lee*, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002)), nor has the Examiner shown that the references suggest the desirability of the combination (*In re Fulton*, 73 USPQ2d 1141, 1145 (Fed. Cir. 2004)).

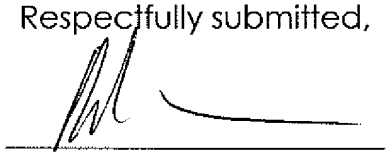
Missing Limitations

In addition to the above, Applicants submit that even if the combination asserted by the Examiner were made, at least the following limitations of claims 1 and 36 would not be met: *"an interface connected to said access gateway for connecting said mobile handset to said access gateway via said interface,"* and, *"sending a first message from said access gateway to said mobile handset."* The Examiner cites Kalavade's router (item 52 in Figure 9) as reading on Applicants' access gateway, and the line between items 50 and 52 in Kalavade's Figure 9 as the above-recited interface. However, item 50 of Kalavade, a laptop computer, is also cited as reading on Applicants' claimed computing device rather than Applicants' mobile handset. Item 50 cannot possibly be both a computing device and a mobile handset. Kalavade does provide a phone (item 30), though the phone does not communicate with Kalavade's router (as seen in Figure 3). Thus, Kalavade cannot satisfy the above-recited limitations, and no other teaching of those limitations has been asserted.

Conclusion

All remaining claims currently pending are dependant on one of claims 1 and 36, and are therefore believed to be allowable for at least the reasons set out above. In view of the above, it is believed that this application is now in condition for allowance, and a Notice thereof is respectfully requested. Applicants' undersigned agent may be reached by telephone at (416) 920-8170 x 109. All correspondence should continue to be directed to our address given below.

Respectfully submitted,



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